

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Minnwest Bank, M.V.,

Plaintiff,

v.

Civil No. 10-817 (JNE/FLN)
ORDER

Chicago Title Insurance Company,

Defendant.

This case arises out of a dispute over a title insurance policy issued by Defendant to Plaintiff. In a Report and Recommendation dated September 3, 2010, the Honorable Franklin L. Noel, United States Magistrate Judge, recommended that Plaintiff's motion for partial summary judgment be denied and that Defendant's motion to dismiss be granted. The magistrate judge concluded that Plaintiff's claims for declaratory relief and breach of contract for failure to indemnify should be dismissed for lack of ripeness; and that Plaintiff's claim for breach of contract for failure to defend should be dismissed because it does not state a facially plausible claim for relief. Plaintiff objected to the Report and Recommendation, and Defendant responded.

The Court has conducted a de novo review of the record. *See* D. Minn. LR 72.2(b). Based on that review, the Court adopts the Report and Recommendation [Docket No. 33]. The Court dismisses the claim for declaratory relief and breach of contract for failure to indemnify without prejudice. *See Centrum Fin. Servs., Inc. v. Chicago Title Ins. Co.*, No. 09-3300, 2010 WL 936201 (D.N.J. Mar. 12, 2010) (construing identical policy language and dismissing claim for declaratory judgment without prejudice). The Court dismisses Plaintiff's breach of contract claim for failure to defend with prejudice.

Based on the files, records, and proceedings herein, and for the reasons stated above, IT
IS ORDERED THAT:

1. Minnwest Bank, M.V.'s Motion for Partial Summary Judgment [Docket No. 7] is DENIED.
2. Chicago Title Insurance Company's Motion to Dismiss [Docket No. 3] is GRANTED.
3. Minnwest Bank, M.V.'s claim for declaratory relief is DISMISSED WITHOUT PREJUDICE. Minnwest Bank, M.V.'s claim for breach of contract is DISMISSED WITHOUT PREJUDICE insofar as it alleges failure to indemnify and DISMISSED WITH PREJUDICE insofar as it alleges failure to defend.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated: November 18, 2010

s/ Joan N. Ericksen
JOAN N. ERICKSEN
United States District Judge